

**CLAIM AMENDMENTS:**

**PLEASE MAKE THE FOLLOWING CHANGES:**

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1. **(Currently Amended)** A smudge resistant water and oil emulsion composition for making up the eyes and skin comprising a water phase, an oil phase, at least one film forming polymer which is selected from the group consisting of (i) a copolymer of silicone and ethylenically unsaturated monomers; (ii) a polymer comprised of polymerized ethylenically unsaturated monomers; (iii) a silicone polymer; and (iv) mixtures thereof; and at least one organic pigment forming the main color component of the composition, said composition being free of inorganic pigments.
  2. **(Original)** The composition of claim 1 which is a water-in-oil emulsion or an oil-in-water emulsion.
  3. **(Original)** The composition of claim 1 wherein the organic pigments are soluble in the water phase.
  4. **(Original)** The composition of claim 1 wherein the organic pigments are dispersible in the oil phase.
  5. **(Previously Amended)** The composition of claim 1 wherein the at least one organic pigment is a D&C color, FD&C color, or Lakes of D&C or FD&C color.
  6. **(Previously Amended)** The composition of claim 5 wherein the at least one organic pigment is selected from the group consisting of red, green, blue, yellow, violet, orange, and mixtures thereof.

7. **(Previously Amended)** The composition of claim 1 which provides a black or dark brown color to the eyes or skin to which it is applied, and said color is achieved by combining organic pigments selected from the group consisting of red, green, blue, yellow, violet, orange, and mixtures thereof.

8. **(Previously Amended)** The composition of claim 6 wherein the red pigment is selected from the group consisting of monoazo, disazo, fluoran, xanthene, or indigoid pigment.

9. **(Original)** The composition of claim 8 wherein the red pigment is a monoazo pigment or salt thereof.

10. **(Previously Amended)** The composition of claim 6 wherein the green pigment is a selected from the group consisting of triphenylmethane, anthroquinone, or pyrene.

11. **(Original)** The composition of claim 10 wherein the green pigment is an anthroquinone pigment or Lake thereof.

12. **(Previously Amended)** The composition of claim 6 wherein the blue pigment is a triphenylmethane pigment.

13. **(Previously Amended)** The composition of claim 6 wherein the yellow pigment is selected from the group consisting of pyrazole, monoazo, fluoran, xanthene, or quinoline.

14. **(Original)** The composition of claim 13 wherein the yellow pigment is a pyrazole.

15. **(Original)** The composition of claim 1 wherein the oil phase comprises one or more volatile components.

16. **(Original)** The composition of claim 15 wherein the volatile components are silicones, hydrocarbons, or mixtures thereof.

17. **(Original)** The composition of claim 16 comprising about 5-85% by weight of the total composition of one or more volatile components.

18. **(Currently Amended)** The composition of claim 1 wherein the film forming polymer is a ~~copolymer of silicone and ethylenically unsaturated monomers~~; a polymer comprised of polymerized ethylenically unsaturated monomers; or a silicone polymers.

19. **(Currently Amended)** The composition of claim 1 ~~18~~ wherein the film forming polymer is a copolymer of silicone and ethylenically unsaturated monomers.

20. **(Original)** The composition of claim 19 wherein the film forming polymer is a silicone acrylate copolymer.

21. **(Previously Amended)** The composition of claim 1 which is an eyelash color, eyeliner, composition for coloring eyebrows, facial or body tattoo, or lipcolor.

22. **(Canceled)**

23. **(Previously Amended)** The composition of claim 1 further comprising a plasticizer in an amount sufficient to improve spreadability and application of the composition when used to make up the eyes or skin.

24. **(Original)** The composition of claim 23 wherein the plasticizer is present at about 0.01-20% by weight of the total composition.

25. **(Original)** The composition of claim 24 wherein the plasticizer is a glycerol, glycol, or citrate ester; or an ester of adipic or malic acid.

26. **(Previously Amended)** The composition of claim 1 further comprising one or more viscosity modifiers which increase the viscosity of the composition.

27. **(Previously Amended)** The composition of claim 26 wherein the viscosity modifier is present at 0.01-60% by weight of the total composition.

28. **(Previously Amended)** The composition of claim 27 wherein the viscosity modifier is selected from the group consisting of natural or synthetic montmorillonite minerals, associative thickeners, silicas, or silicates.

29. **(Previously Amended)** The composition of claim 28 wherein the viscosity modifier is a natural or synthetic montmorillonite mineral reacted with a quaternary ammonium compound.

30. **(Currently Amended)** A smudge resistant water and oil emulsion composition for making up the eyes or skin comprised of a water phase and an oil phase, at least one film forming polymer which is selected from the group consisting of (i) a copolymer of silicone and ethylenically unsaturated monomers; (ii) a polymer comprised of polymerized ethylenically unsaturated monomers; (iii) a silicone polymer; and (iv) mixtures thereof, at least one organic pigment, and at least one inorganic pigment, wherein at least one organic pigment and at least one inorganic pigment are dispersed in the oil phase and the organic pigment forms the main color component of the composition.

31. **(Original)** The composition of claim 30 wherein the organic pigments are D&C colors, FD&C colors, or Lakes of D&C or FD&C colors.

32. **(Original)** The composition of claim 31 wherein the organic pigments are Lakes of D&C or FD&C colors.

33. **(Previously Amended)** The composition of claim 30 wherein the inorganic pigment is coated with silicone, lecithin, mineral oil, amino acids, or mixtures thereof.

34. **(Original)** The composition of claim 30 wherein the film forming polymer is soluble or dispersible in the oil phase.

35. **(Original)** The composition of claim 30 wherein the film forming polymer is soluble or dispersible in the water phase.

36. **(Original)** The composition of claim 30 wherein the oil phase comprises one or more volatile components.

37. **(Original)** The composition of claim 36 wherein the volatile components are silicones, hydrocarbons, or mixtures thereof.

38. **(Currently Amended)** The composition of claim 30 wherein the film forming polymer is a copolymer of silicone and ethylenically unsaturated monomers; a polymer comprised of polymerized ethylenically unsaturated monomers; or mixtures thereof ~~silicone polymers~~.

39. **(Original)** The composition of claim 38 wherein the film forming polymer is a copolymer of silicone and ethylenically unsaturated monomers.

40. **(Original)** The composition of claim 39 wherein the film forming polymer is a silicone acrylate copolymer.

41. **(Previously Amended)** The composition of claim 30 which is an eyelash color, eyeliner, cosmetic composition for coloring eyebrows, a facial or body tattoo, or a lip color.

42. **(Previously Amended)** The composition of claim 30 further comprising a plasticizer in an amount sufficient to improve spreadability and application of the composition when used to make up the eyes or skin.

45. **(Previously Amended)** The composition of claim 30 further comprising one or more viscosity modifiers which increase the viscosity of the composition.

46. **(Previously Amended)** The composition of claim 45 wherein the viscosity modifier is present at 0.01-60% by weight of the total composition and comprises natural or synthetic montmorillonite minerals, associative thickeners, silicas, or silicates.

47. **(Previously Amended)** The composition of claim 46 wherein the viscosity modifier is a natural or synthetic montmorillonite mineral reacted with a quaternary ammonium compound.

48. **(Currently Amended)** A smudge resistant water and oil emulsion composition for making up the eyes or skin comprised of a water phase and an oil phase, at least one film forming polymer which is selected from the group consisting of (i) a copolymer of silicone and ethylenically unsaturated monomers; (ii) a polymer comprised of polymerized ethylenically unsaturated monomers; (iii) a silicone polymer; and (iv) mixtures thereof, at least one organic pigment, and at least one inorganic pigment, wherein at least one organic pigment is solubilized

in the water phase and at least one inorganic pigment is dispersed in the oil phase, and said organic pigment comprises the main color component of the composition.

**49. (Original)** The composition of claim 48 wherein the organic pigments are D&C colors, FD&C colors, or Lakes of D&C or FD&C colors.

**50. (Previously Amended)** The composition of claim 48 wherein the inorganic pigment is treated with silicone, lecithin, mineral oil, amino acids or mixtures thereof.

**51. (Original)** The composition of claim 48 wherein the film forming polymer is soluble or dispersible in the oil phase.

**52. (Original)** The composition of claim 51 wherein the film forming polymer is soluble or dispersible in the water phase.

**53. (Original)** The composition of claim 48 wherein the oil phase comprises one or more volatile components.

**54. (Original)** The composition of claim 53 wherein the volatile components are silicones, hydrocarbons, or mixtures thereof.

**55. (Currently Amended)** The composition of claim 48 wherein the film forming polymer is a copolymer of silicone and ethylenically unsaturated monomers; a polymer comprised of polymerized ethylenically unsaturated monomers; or mixtures thereof ~~silicone polymers~~.

**56. (Original)** The composition of claim 55 wherein the film forming polymer is a copolymer of silicone and ethylenically unstaturated monomers.

57. **(Original)** The composition of claim 56 wherein the film forming polymer is a silicone acrylate copolymer.

58. **(Previously Amended)** The composition of claim 48 which is an eyelash color, eyeliner, cosmetic composition for coloring eyebrows, facial or body tattoo composition, or lip color.

59. **(Previously Amended)** The composition of claim 48 further comprising a plasticizer in an amount sufficient to improve spreadability and application of the composition when used to make up the eyes or skin.

60. **(Original)** The composition of claim 59 wherein the plasticizer is present at about 0.01-20% by weight of the total composition.

61. **(Original)** The composition of claim 60 wherein the plasticizer is a glycerol, glycol, or citrate ester; or an ester of adipic or malic acid.

62. **(Previously Amended)** The composition of claim 48 further comprising one or more viscosity modifiers which increase the viscosity of the composition.

63. **(Previously Amended)** The composition of claim 62 wherein the viscosity modifier is present at 0.01-60% by weight of the total composition.

64. **(Previously Amended)** The composition of claim 63 wherein the viscosity modifier is selected from the group consisting of natural or synthetic montmorillonite minerals, associative thickeners, silicas, or silicates.

65. **(Previously Amended)** The composition of claim 64 wherein the viscosity modifier is a natural or synthetic montmorillonite mineral reacted with a quaternary ammonium compound.



66. **(Currently Amended)** A smudge resistant water and oil emulsion composition for making up the eyes or skin comprised of a water phase and an oil phase, at least one film forming polymer which is selected from the group consisting of (i) a copolymer of silicone and ethylenically unsaturated monomers; (ii) a polymer comprised of polymerized ethylenically unsaturated monomers; (iii) a silicone polymer; and (iv) mixtures thereof, at least one organic pigment, and at least one inorganic pigment, wherein at least one organic pigment is dispersed in the oil phase and at least one inorganic pigment is solubilized in the water phase, and said organic pigment comprises the main color component of the composition.

67. **(Original)** The composition of claim 66 wherein the organic pigments are D&C colors, FD&C colors, or Lakes of D&C or FD&C colors.

68. **(Original)** The composition of claim 67 wherein the organic pigments are Lakes of D&C or FD&C colors.

69. **(Original)** The composition of claim 66 wherein the film forming polymer is soluble or dispersible in the oil phase.

70. **(Original)** The composition of claim 69 wherein the film forming polymer is soluble or dispersible in the water phase.

71. **(Original)** The composition of claim 66 wherein the oil phase comprises one or more volatile components.

72. **(Original)** The composition of claim 71 wherein the volatile components are silicones, hydrocarbons, or mixtures thereof.

73. **(Original)** The composition of claim 66 wherein the film forming polymer is a copolymer of silicone and ethylenically unsaturated monomers; a polymer comprised of polymerized ethylenically unsaturated monomers; or mixtures thereof ~~silicone polymers~~.

74. **(Original)** The composition of claim 73 wherein the film forming polymer is a copolymer of silicone and ethylenically unsaturated monomers.

75. **(Original)** The composition of claim 74 wherein the film forming polymer is a silicone acrylate copolymer.


76. **(Previously Amended)** The composition of claim 75 which is an eyelash color, eyeliner, cosmetic composition for coloring eyebrows, facial or body tattoo composition, or lip color.

77. **(Previously Amended)** The composition of claim 66 further comprising a plasticizer in an amount sufficient to improve spreadability and application of the composition when used to make up the eyes or skin.

78. **(Original)** The composition of claim 77 wherein the plasticizer is a glycerol, glycol, or citrate ester; or an ester of adipic or malic acid.

79. **(Previously Amended)** The composition of claim 66 further comprising one or more viscosity modifiers which increase the viscosity of the composition.

80. **(Previously Amended)** The composition of claim 79 wherein the viscosity modifier is present at 0.01-60% by weight of the total composition, and is a natural or synthetic montmorillonite mineral, associative thickener, silica, silicate, or mixtures thereof.

**81. (Currently Amended)** A smudge resistant water and oil emulsion composition for making up the eyes or skin comprised of a water phase and an oil phase, at least one film forming polymer which is selected from the group consisting of (i) a copolymer of silicone and ethylenically unsaturated monomers; (ii) a polymer comprised of polymerized ethylenically unsaturated monomers; (iii) a silicone polymer; and (iv) mixtures thereof, at least one organic pigment, and at least one inorganic pigment, wherein at least one organic pigment is solubilized in the water phase and at least one inorganic pigment is solubilized in the water phase and said organic pigment comprises the main color component of the composition.

**82. (Original)** The composition of claim 81 wherein the organic pigments are D&C colors, FD&C colors, or Lakes of D&C or FD&C colors.

**83. (Original)** The composition of claim 82 wherein the organic pigments are Lakes of D&C or FD&C colors.

**84. (Original)** The composition of claim 81 wherein the oil phase comprises one or more volatile components.

**85. (Original)** The composition of claim 84 wherein the volatile components are silicones, hydrocarbons, or mixtures thereof.

**86. (Original)** A water and oil emulsion composition for making up the eyes and skin comprised of a water phase and an oil phase, at least one film forming polymer, and at least one organic pigment forming the main color component of the composition, wherein said composition does not contain any synthetic or natural waxes.

87. (Original) The composition of claim 86 which does not contain any solid non-polymeric, organic gelling agents.

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REMARKS

Claims 1-21 and 23-87 remain pending in the application. All of the claims are rejected under 35 U.S.C. §103 as unpatentable over McDermott, U.S. Patent No. 6,248,336, or Shah, WO 00/47168 or Calleslo 5,849,275.

The Examiner first contends that the Declaration of Jean Manelski, submitted with the prior response for the purpose of substantiating patentability was not persuasive because the compositions prepared by Manelski were water dispersed pigmented compositions and the pending claims are directed to water and oil emulsion compositions. The Examiner concludes that Manelski compared compositions that were not commensurate in scope with the claims.

With this response Applicants submit further comparative studies where the compositions prepared were in the emulsion form, and compared with the claimed compositions. In particular, Manelski prepared the McDermott emulsion composition of Example 1 as is. Test compositions were prepared where the iron oxide pigments of McDermott were removed and substituted with organic pigments with variations in the dispersibility or solubility in the oil or water phases. The test results show the superiority of the claimed compositions when compared with McDermott in the eyelash smudge test using soapy water. Additional studies carried out with respect to film integrity and smudging when applied to draw down cards show that while the claimed composition was smudge resistant as evidenced by the results of the soapy water test, it did exhibit a slight